Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Flexibility for Delivery	)	IB Docket No. 01-185
Of Communications by	)	
Mobile Satellite Service Providers	)	
In the 2 GHz Band, the L-Band, and the	)	
1.6/2.4 GHz Band	)	
	)	
Amendment of Section 2.106 of the Commission's	)	ET Docket No. 95-18
Rules to Allocate Spectrum at 2 GHz for Use	)	
By the Mobile-Satellite Service	)	

COMMENTS OF THE CELLULAR TELECOMMUNICATIONS & INTERNET ASSOCIATION

Michael F. Altschul
Senior Vice President, General Counsel
1250 Connecticut Avenue, N.W.
Suite 800
Washington, D.C. 20036
(202) 785-0081

October 22, 2001

TABLE OF CONTENTS

Page

DISCUSSION 3

I. THE COMMISSION SHOULD EITHER LIMIT ANY TERRESTRIAL SERVICE TO TRULY ANCILLARY USE OR GRANT FLEXIBILITY THROUGH A SEPARATE AUTHORIZATION AWARDED BY COMPETITIVE BIDDING 3

A. The Proposed Ancillary Services Need to Be Appropriately Limited if They Are to Be Included Within the Scope of Existing MSS Authorizations. 5

B. Permitting the Provision of Terrestrial Service Using MSS Spectrum Requires a Separate Authorization, Which Can and Should Be Awarded Through Competitive Bidding. 7

1. Any flexible use of the 2 GHz band should be granted through a separate authorization awarded by competitive bidding. 7

2. If the Commission grants flexibility through a separate authorization and awards those authorizations through competitive bidding, then the grant of flexibility will comply with Section 303(y). 10

II. PRESERVING THE VIABILITY OF MSS IS NOT THE FCC'S DUTY AND SHOULD NOT BE THE GOAL OF THIS PROCEEDING 12

III. IF THE FCC DOES AUTHORIZE ANCILLARY TERRESTRIAL SERVICES IN MSS BANDS, IT SHOULD DO SO IN A MANNER THAT MAXIMIZES SPECTRUM EFFICIENCY 13

CONCLUSION 16

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Flexibility for Delivery	)	IB Docket No. 01-185
Of Communications by	)	
Mobile Satellite Service Providers	)	
In the 2 GHz Band, the L-Band, and the	)	
1.6/2.4 GHz Band	)	
	)	
Amendment of Section 2.106 of the Commission's	)	ET Docket No. 95-18
Rules to Allocate Spectrum at 2 GHz for Use	)	
By the Mobile-Satellite Service	)	

COMMENTS OF THE CELLULAR TELECOMMUNICATIONS & INTERNET ASSOCIATION

The Cellular Telecommunications & Internet Association ("CTIA")[1/] respectfully submits these comments in response to the Notice of Proposed Rulemaking released in the above-captioned proceeding.[2/] This Notice focuses on proposals by two Mobile Satellite Service ("MSS") providers who ask that MSS licensees be authorized to offer ancillary terrestrial services within their existing MSS spectrum. While characterized as "ancillary" offerings, these proposals extend far beyond the concept of an ancillary service. They amount to an entirely new service offering that was not contemplated by the original allocation or service rules, and has not been shown to be a justifiable use of this valuable spectrum.

1/ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers and manufacturers. CTIA represents more broadband PCS carriers and more cellular carriers than any other trade association.

2/ In the Matter of Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Band; Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, IB Docket No. 01-185, ET Docket No. 95-18, Notice of Proposed Rulemaking, FCC 01-225 (rel. Aug. 17, 2001) ("Notice").

If the Commission were to consider permitting MSS licensees to offer "ancillary" terrestrial services, it must carefully define the permissible scope of such services and ensure that they are truly ancillary. Alternatively, if the Commission determines to grant MSS licensees the flexibility to provide additional and different services in these bands, it must comply with the requirements of sections 303(y) and 309(j) of the Communications Act, and grant such flexibility through a separate authorization awarded by competitive bidding. Experience has shown that this pro-competitive approach to managing spectrum is also the best means of meeting consumer needs. The Commission should also ensure that the manner in which it authorizes terrestrial services in these bands maximizes spectrum efficiency.

DISCUSSION

I. THE COMMISSION SHOULD EITHER LIMIT ANY TERRESTRIAL SERVICE TO TRULY ANCILLARY USE OR GRANT FLEXIBILITY THROUGH A SEPARATE AUTHORIZATION AWARDED BY COMPETITIVE BIDDING

The Commission seeks comment on whether to grant MSS licensees "flexibility" to use terrestrial operations in conjunction with their satellite services "on an ancillary basis," as requested by New ICO.[3/] That is not, however, the issue presented by New ICO's ancillary terrestrial component ("ATC") proposal. While characterized as an "ancillary" component, New ICO's terrestrial service would be a wholly new use of 2 GHz MSS spectrum requiring a new allocation of that band for that purpose. As the Commission itself recognizes elsewhere in the Notice, "ancillary" services are limited

---

[3/] Id. at ¶ 22. CTIA's comments focus on the terrestrial service proposal submitted by New ICO because the 2 GHz band is the subject of other proceedings where the Commission is considering the suitability of some or all of this band for advanced mobile services. See, e.g., Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use By the Mobile-Satellite Service, The Establishment of Policies and Service Rules for the Mobile-Satellite Service in the 2 GHz Band, Petition for Rule Making of the Wireless Information Networks Forum Concerning the Unlicensed Personal Communications Service, Petition for Rule Making of UTStarcom, Inc., Concerning the Unlicensed Personal Communications Service; ET Docket No. 00-258, ET Docket No. 95-18, IB Docket No. 99-81, RM-9498, RM-10024; Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, FCC 01-224 (rel. Aug. 20, 2001) ("Further Notice"). We note, however, that many of the issues raised in these comments with respect to the New ICO proposal apply to the Motient terrestrial proposal, and would apply to a similar proposal in the Big LEO band as well.

and do not "differ materially in nature or character from the principal services offered."[4/] This limited, subordinate view of ancillary services is consistent with judicial interpretations of the term ancillary, which explain that it "points to something that, in terms of its function or purpose, is part of or is related to, something else."[5/] The technical submissions by New ICO indicate that New ICO's ATC service is not integrated into its satellite network, but is in fact offered through an entirely separate and parallel infrastructure – in short, it is in no way ancillary to its MSS service.

"Flexibility" has been the Commission's favored approach to spectrum management and licensing in recent years.[6/] As an approach to spectrum management and licensing, flexibility can take many forms. "Flexible" service rules provide licensees with more freedom to determine the specific services to be offered,[7/] while "flexible" technical rules provide licensees more freedom to determine which technologies to use to provide those services.[8/] Flexibility can also be provided by allowing licensees to make some or all of their spectrum available to others.[9/] While grants of flexibility do not need to be limited and subordinate like grants of ancillary authority, there are other restrictions on the

---

4/ Id. at ¶ 30.

5/ See, e.g., Best Power Technology Sales Corporation v. Richard G. Austin, Administrator, General Services Administration, 984 F.2d 1172 (Fed. Cir. 1993) (noting that undefined terms in a statute are deemed to have their ordinarily understood meaning, and the ordinarily understood meaning of the term ancillary is something that is subordinate, subsidiary, auxiliary, related, or supplementary) (internal citations omitted).

6/ Notice at ¶ 2.

7/ See Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, 11 FCC Rcd 8965 (1996) (permitting commercial mobile radio service providers to offer fixed wireless services) ("CMRS Flexibility Order").

8/ See In the Matter of Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions, 13 FCC Rcd 19112 (1998) (adopting technical rule changes to provide MDS and ITFS licensees flexibility to use digital technology and additional modulation techniques to deliver two-way communication services).

9/ See, e.g., Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees, 15 FCC Rcd 10432 (2000) (authorizing spectrum disaggregation by cellular licensees and extending existing partitioning rules to unserved area licensees); Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, 15 FCC Rcd 24203 (2000) (proposing to remove unnecessary regulatory barriers to the development of more robust secondary markets in radio spectrum usage rights).

Commission's authority to provide licensees with flexibility. In the present case, if the Commission is proposing to grant MSS licensees the flexibility to provide additional and different services in a band,[10/] it may do so only if it complies with the requirements of section 303(y) of the Communications Act.[11/] And, because the flexibility New ICO seeks would effectively result in a reallocation of MSS spectrum for a new offering, the Commission must afford other interested parties an opportunity to compete for the new authorizations made available by such an allocation.

A. The Proposed Ancillary Services Need to Be Appropriately Limited if They Are to Be Included Within the Scope of Existing MSS Authorizations.

The Commission explains that it intends the use of the term ancillary in this proceeding to refer to a limited, subordinate service, and not "services that differ materially in nature or character from the principal services offered by MSS providers."[12/] The "ancillary terrestrial component" proposed by New ICO, however, is "ancillary" in name only. In fact, ATC is a wholly new offering that would substitute for satellite-delivered service in more densely populated areas, using a physically separate network. Indeed, the terrestrial service that New ICO proposes would require an entirely new set of technical rules.[13/]

Moreover, the terrestrial service proposed by New ICO would not be integrated with the satellite service. As described in the Notice, New ICO proposes that "the MSS operator would assign separate

---

10/ Principles for Reallocation of Spectrum to Encourage the Development of Telecommunications Technologies for the New Millennium, Policy Statement, 14 FCC Rcd 19868 (1999).

11/ 47 U.S.C. § 303(y).

12/ Notice at ¶ 30. The Commission distinguishes this proceeding from a previous proceeding in which it used the term "ancillary" to refer to the use of spectrum or facilities to provide services of a nature different from the service ordinarily offered over the facilities. Id. (citing Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, 12 FCC Rcd 12809 (1991)). In that proceeding, the Commission was presented with a statutory provision that, while not defining the term "ancillary" itself, compelled the Commission to define ancillary services as any services other than the primary service offered by the licensees in question. See 47 USC §336 (requiring the Commission to assess and collect a fee from licensees who offer ancillary or supplementary services on a subscription basis). No such statute is present here.

13/ See Notice at ¶¶ 34, 54-58. By contrast, when the Commission granted CMRS providers the flexibility to offer fixed services on CMRS spectrum, it maintained its existing technical rules and

channels to the terrestrial and satellite portions of the network to meet traffic demands and … a call could originate and terminate on one part of the network (e.g., terrestrial) without being carried on the other part of the network (e.g., satellite)."[14/] In essence, the only thing the satellite service and the "ancillary" ATC service would share is spectrum.

To be truly "ancillary," therefore, the scope of New ICO's terrestrial component would need to be considerably more limited. The Commission's proposed conditions on ATC would not, however, effectively limit it to a subordinate element of a satellite-delivered service. CTIA believes that changed circumstances have so weakened the prospects for a viable MSS service that the entire 2 GHz band should be made available for terrestrial services and licensed pursuant to competitive bidding.[15/] If the Commission nonetheless decides to proceed with MSS and permit MSS licensees to offer "ancillary terrestrial services," it must carefully define the permissible scope of such services. There are several possible approaches that the Commission could consider taking to make the service closer to a truly ancillary offering. For example, the Commission could require the terrestrial service to be integrated with the satellite service, including a requirement to use integrated "dual mode" handsets. "Dual Mode" satellite/terrestrial handsets would have to be designed to use the satellite system primarily, and revert to the terrestrial system only if the satellite signal is unavailable.

Another approach might be for the Commission to require that the predominant use of the service be the provision of the primary MSS service in any particular geographic area. For example, in urban areas the predominant use of the spectrum would have to be for a satellite-provided service and any terrestrial use would be on a minimal basis. Alternatively, the terrestrial component potentially

---

required licensees who wanted to offer fixed services to comply with those rules. CMRS Flexibility Order at ¶ 2.

14/ Notice at ¶ 11.

15/ See, e.g., Petition for Rulemaking of the Cellular Telecommunications & Internet Association (filed May 18, 2001); Petition for Reconsideration of the Cellular Telecommunications & Internet Association, ET Docket Nos. 00-258 and 95-18; IB Docket No. 99-81 (filed Oct. 15, 2001).

could be limited to the use of terrestrial repeaters in urban areas, which would re-transmit the satellite signal to subscribers in areas where the satellite signal is difficult to receive.[16/]

B. Permitting the Provision of Terrestrial Service Using MSS Spectrum Requires a Separate Authorization, Which Can and Should Be Awarded Through Competitive Bidding.

If the Commission wishes to permit MSS licensees to offer the distinct terrestrial service proposed by New ICO, it must modify the current allocation of the MSS bands. Such a reallocation is required by section 303(y) of the Communications Act and is consistent with the Commission's historic approach to "flexible" use.[17/] CTIA supports the idea of flexible use in principle and agrees with the Commission that grants of flexibility can result in more "efficient spectrum markets" by allowing licensees to respond to changes in market conditions and consumer demand. However, the significant flexibility demanded by MSS licensees may only be granted in accordance with statutory requirements and due regard for the public interest in ensuring the highest and best use of this scarce spectrum resource.

1. Any flexible use of the 2 GHz band should be granted through a separate authorization awarded by competitive bidding.

Because existing MSS licenses do not permit the provision of terrestrial services -- unlike the initial PCS licenses, which expressly contemplated fixed as well as mobile services[18/] -- the Commission must specifically authorize the provision of such services through a new allocation of terrestrial rights in the MSS bands. Authorizing "flexible" use of this spectrum would permit services to be offered that

---

16/ The International Bureau recently granted special temporary authority to use terrestrial repeaters to two Satellite Digital Audio Radio Service providers. See, e.g., Sirius Satellite Radio, Inc., File No. SAT-STA-20010724-00064, Order and Authorization, DA 01-2171 (Sept. 17, 2001); XM Radio Inc., File No. SAT-STA-20010712-00063, Order and Authorization, DA 01-2172 (Sept. 17, 2001).

17/ See, e.g., Service Rules for the 746-764 and 776-794 MHz Bands and Revisions to Part 27 of the Commission's Rules, 15 FCC Rcd 476 at ¶ 24 (2000) (finding that section 303(y) applies to "sharing of specific spectrum bands by services treated as distinct by the international and domestic allocations process") ("Upper 700 MHz MO&O and FNPRM").

18/ See Amendment of the Commission's Rules to Establish New Personal Communications Services, 8 FCC Rcd 7700 at ¶ 23 (1993) (defining PCS to include fixed services offered on an ancillary basis).

were never before contemplated. Given the new and different nature of terrestrial services as compared to the limited bundle of rights already granted to MSS operators to provide satellite services, equity and the public interest in ensuring the highest and best use of the spectrum require that any authorization to provide terrestrial service in the MSS bands be separate from the existing authorizations to provide satellite services.

Section 309(j)(1), in turn, requires the Commission to award these separate authorizations to provide terrestrial services by competitive bidding.[19/] The mandatory use of auctions ensures that licenses are assigned to those who place the highest value on the use of the spectrum.[20/] Since Section 309(j) was added to the Communications Act in 1993,[21/] the Commission has consistently concluded that domestic commercial spectrum should be auctioned.[22/] This policy was confirmed by the 1997 amendments to Section 309(j).[23/]

Using competitive bidding to award these new authorizations would also ensure that they are assigned in the same manner as other similarly-situated authorizations to provide terrestrial service have been granted. It would not be equitable to award free spectrum to one entrant in a competitive market

---

19/ 47 U.S.C. § 309(j)(1).

20/ See NextWave Personal Communications, Inc. and NextWave Power Partners Inc. (Petition for Reconsideration Public Notice DA 00-49 Auction of C and F Block Broadband PCS Licenses); In re Settlement Request Pursuant to DA 99-745 For Various Broadband PCS C Block Licenses, 15 FCC Rcd 17500 at ¶ 27 (2000) ("Section 309(j) embodies a presumption that licenses should be allocated as a result of an auction to those who place the highest value on the use of the spectrum. Such entities are presumed to be those best able to put the licenses to their most efficient use.").

21/ Omnibus Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002, 107 Stat. 312, 387-397 (1993).

22/ Services that have been auctioned include: (1) narrowband and broadband Personal Communications Services, (2) Public Mobile Services, (3) 218-219 MHz Service, (4) Specialized Mobile Radio Services, (5) Private Carrier Paging Service, (6) General Wireless Communications Service, (7) Local Multipoint Distribution Service, (8) Wireless Communications Service, (9) Digital Audio Radio Service, (10) Direct Broadcast Service, (11) 220-222 MHz radio service, (12) Location and Monitoring Service, and (13) VHF Public Coast Stations. See Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, 14 FCC Rcd 5206 at ¶ 8 (1999). The Commission also recently completed its auction of the 700 MHz Guard Band and has announced upcoming auctions of the 700 MHz Band, Limited Low Power Television, and the 24 GHz Band ("DEMS").

23/ See Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251 § 3002 (1997).

when others have paid billions for the same rights. While the Commission may have granted flexibility to other terrestrial wireless licensees in the past, the original service rules for those services contemplated flexible use and the licensees paid for their rights -- including flexibility -- at auction.[24/]

There is no legal impediment to obtaining compensation for this grant of flexibility.[25/] As the Commission has already determined in other proceedings, the Open-Market Reorganization for the Betterment of International Telecommunications Act (the "ORBIT Act")[26/] applies only to authorizations of spectrum *used for* international satellite services, not to authorizations of spectrum for domestic terrestrial services that also use the same bands.[27/] The court's findings in NPR v. FCC do not change that conclusion.[28/] In that case, the United States Court of Appeals for the District of Columbia Circuit reversed a Commission order that required non-commercial educational broadcasters to participate in auctions for commercial broadcast channels.[29/] The court found that the prohibition on auctions in section 309(j)(2) was based on the identity of the licensee,[30/] not on the use for which a particular spectrum band was allocated. The court therefore held that the Commission could not require

---

24/ See supra note 18. See also 47 C.F.R. § 27.2 (permitting a WCS licensee to "provide any services for which its frequency bands are allocated"). While the Commission has granted cellular licensees the flexibility to offer fixed services, either separately or as an integrated package with their mobile services, there was no auction requirement in effect when cellular licenses were granted. See CMRS Flexibility Order.

25/ See Notice at ¶ 39.

26/ Pub. L. No. 106-180, § 647, 114 Stat. 48 (enacted March 12, 2000) ("Notwithstanding any other provision of law, the Commission shall not have the authority to assign by competitive bidding *orbital locations or spectrum used for the provision of international or global satellite* communications services.") (emphasis added).

27/ See Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range; Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2-12.7 GHz Band by Direct Broadcast Satellite Licensees and their Affiliates; and Applications of Broadwave USA, PCS Broadband Corporation, and Satellite Receivers Ltd., to Provide a Fixed Service in the 12.2-12.7 GHz Band, 16 FCC Rcd 4096 at ¶ 326 (2000).

28/ National Public Radio v. FCC, 254 F.3d 226 (D.C. Cir. 2001).

29/ Id. at 227.

30/ Id. at 229.

non-commercial educational broadcasters to participate in any auction, even if the spectrum being auctioned was not designated for non-commercial educational broadcast services.[31/]

Unlike the limitation on auctions at issue in NPR v. FCC, the restriction on the Commission's auction authority in the ORBIT Act is service based, not licensee based; the prohibition applies only to auctions of "orbital locations or spectrum used for the provision of international or global satellite communications services." In the present case, the spectrum being auctioned clearly will not be used for international satellite services, but domestic terrestrial services. The ORBIT Act therefore does not prohibit the Commission from using its auction authority to grant authorizations to provide domestic terrestrial services in the 2 GHz band.

Moreover, for competitive bidding to work efficiently, all interested parties must be eligible to bid for terrestrial authorizations in the MSS band. Distorting the auction process by limiting the eligible bidders would preclude the public from realizing the full value of this resource. Moreover, if eligibility to participate is limited to the original MSS system operators, other parties that may place a higher value on the spectrum will be precluded from participating, potentially depriving the public of the most innovative, efficient uses of this scarce resource. As Chairman Powell has explained previously, unnecessarily restricting eligibility "smothers the development of innovative uses of the band, employing different business models and technology. . . . It is the auction process and the market that should pick the winning and losing business models for the provision of spectrum-based services."[32/]

2. If the Commission grants flexibility through a separate authorization and awards those authorizations through competitive bidding, then the grant of flexibility will comply with Section 303(y).

Section 303(y) grants the Commission authority to permit flexible use of particular spectrum bands if the Commission finds that such use (1) is consistent with international agreements to which the United States is a party; (2) is in the public interest; (3) would not deter investment in communications

---

31/ Id.

services and systems, or technology development; and (4) would not result in harmful interference among users.[33/] As the Commission has noted, Congress was concerned that "proposals for flexible use of spectrum have the potential, if not thoroughly considered, to create interference between services and discourage investment and technical innovation."[34/]

For the proposed flexible use of the 2 GHz band to meet the public interest test of section 303(y)(2)(A), authorizations must be awarded by competitive bidding open to all interested parties. Giving all qualified entities the flexibility to pursue the highest and best use of the spectrum will foster the "rapid, efficient" deployment of radio communication service called for in the Communications Act.[35/] By contrast, a grant of flexibility limited only to current MSS system operators would not serve the public interest. These few entities would receive a windfall -- the equivalent of a free nationwide license to provide terrestrial services that they would be able to use to compete against existing terrestrial wireless service providers who paid billions for the same rights. Moreover, granting flexibility to MSS providers would not provide any compensation to the public for this valuable spectrum, and there would be no assurance that the resulting service would serve public needs.

Awarding separate authorizations that permit terrestrial use of this band by those who place the highest value on the spectrum also would spur, not deter, investment and innovation in communications services and technologies. But if the Commission simply hands additional terrestrial authority to existing system operators, who face no market pressure to complete their existing deployment plans because they did not compete for their spectrum at auction, there would be a great risk that the spectrum would be underutilized, limiting the potential services and technologies that otherwise would develop.

32/ Separate Statement of Commissioner Michael Powell, Dissenting in Part, Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, 15 FCC Rcd 5299 (2000).

33/ 47 U.S.C. § 303(y).

34/ See Upper 700 MHz MO&O and FNPRM at ¶ 10.

35/ 47 U.S.C. § 151.

II. PRESERVING THE VIABILITY OF MSS IS NOT THE FCC'S DUTY AND SHOULD NOT BE THE GOAL OF THIS PROCEEDING

The Commission's duty is not to ensure the continued viability of any particular industry or technology, but instead to further the public interest by promoting the highest and best use of an extremely scarce public resource -- in this case, spectrum below 3 GHz. Experience has shown that this pro-competitive approach to managing spectrum is also the best means of meeting consumer needs.

The goals advanced by New ICO in support of its ATC proposal are in fact best met -- and are being met -- through the operation of the competitive marketplace in wireless communications created in part by the Commission's past allocation decisions. In rural areas, for instance, terrestrial CMRS operators already provide service, as the FCC's Sixth Competition Report documents.[36/]

In fact, granting MSS providers flexibility to provide terrestrial service as New ICO proposes may actually harm coverage in rural markets, because providing terrestrial service will diminish operators' capacity to provide satellite service. Due to interference limitations, it appears likely that some portion of the terrestrial bandwidth cannot overlap frequencies used by the satellite links and would have to be allocated from the bandwidth that might otherwise have been used to provide satellite services.

Even if ensuring the viability of MSS was the Commission's concern, it is unlikely that MSS licensees would realize sufficient revenues from providing service in highly competitive urban wireless markets to cross-subsidize service in rural areas. Indeed, basic regulatory economics teaches that such cross-subsidies are not possible in truly competitive markets like urban wireless markets.[37/] And the

---

[36/] In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services; Sixth Report at Appendix E, Map 1, page E-2 (rel. July 17, 2001) ("Sixth CMRS Report"). For ease of reference, that map is attached hereto as Attachment A.

[37/] See Alenco, Inc. v. FCC, 201 F.3d 608 (2000) ("in a competitive environment, a carrier that tries to subsidize below-cost rates to rural customers with above-cost rates to urban customers is vulnerable to a competitor that offers at-cost rates to urban customers").

Commission's recognition of this fundamental economic principle has been the basis for many decisions.[38/]

If MSS providers really just need a way to supplement coverage in urban areas, they can make alternative arrangements with CMRS providers.[39/] In fact, both New ICO and Motient have affiliated terrestrial wireless operations -- New ICO shares common ownership with Nextel Communications, Inc.[40/] and Motient provides mobile data services to customers over a terrestrial wireless network.[41/] And if there is truly a need for such services, other CMRS providers will have market-based incentives to enter into similar arrangements.

III. IF THE FCC DOES AUTHORIZE ANCILLARY TERRESTRIAL SERVICES IN MSS BANDS, IT SHOULD DO SO IN A MANNER THAT MAXIMIZES SPECTRUM EFFICIENCY

The Commission proposes that, if an MSS operator does not fulfill its satellite implementation milestones, it will lose any opportunity to implement an ancillary terrestrial service.[42/] CTIA agrees. As we argue in the companion proceeding on advanced wireless services, the failure of an MSS licensee to

---

38/ See, e.g., Implementation of Section 304 of the Telecommunications Act of 1934; Commercial Availability of Navigation Devices, 13 FCC Rcd 14775 at ¶ 89 (1998) (discussing concerns about cross-subsidies in regulated industries and the reduced risk of such subsidies in competitive markets); Comsat Corporation Petition Pursuant to Section 10(c) of the Communications Act of 1934, as Amended, for Forbearance from Dominant Carrier Regulation and for Reclassification as a Non-Dominant Carrier, 13 FCC Rcd 14083 at ¶ 90 (April 28, 1998) (noting that competition in certain service markets limits Comsat's ability to increase its rates for these services); Policy and Rules Concerning Rates for Dominant Carriers, 3 FCC Rcd 3195 at ¶ 283 (1988) (explaining that services that are subject to a greater degree of competition have a lesser risk of cross-subsidy and discrimination).

39/ Notice at ¶ 27.

40/ Entities controlled by Craig O. McCaw hold significant ownership interests in both Nextel and New ICO. See, e.g., Nextel Communications, Inc., Amendment 1 to Form S-3, Registration Statement Under the Securities Act of 1933, at 12, U.S. Securities and Exchange Comm'n, Registration No. 33-37102 (filed June 16, 2000), available at <http://www.sec.gov/Archives/edgar/data/824169/000095013300002613/0000950133-00-002613-0001.txt>; ICO-Teledesic Global Limited Application for Transfer of Control of Space Station License of Teledesic LLC to ICO-Teledesic Global Limited ICO Services; Limited Petition for Declaratory Ruling; Amendment of Letter of Intent of ICO Services Limited to Access the 2 GHz MSS Frequency Bands; File No. SAT-T/C-20000531-00097 et al.; Memorandum Order, Opinion, and Authorization, DA 01-6 at ¶ 3 (Jan. 9, 2001).

41/ Sixth CMRS Report at 69.

42/ Notice at ¶ 48.

comply with its implementation milestones should be considered conclusive evidence that the licensee's plans lack viability and should automatically trigger reallocation of its spectrum to advanced wireless services.[43/] Once this abandoned spectrum is redistributed -- for advanced wireless services or any other purpose -- any truly ancillary terrestrial service provided by the MSS system operator must cease to be functional.

The Commission also asks whether it should limit terrestrial services to the precise frequencies assigned to the MSS operator.[44/] Because terrestrial systems would have to be physically retuned if their frequency bands were changed, allowing MSS providers to offer terrestrial service outside of their system's selected assignment would impair the Commission's ability to reallocate that spectrum if the MSS provider fails to meet its milestones. Limiting terrestrial service to the MSS operator's selected assignment would also limit the potential for interference within the MSS band.[45/]

The Commission asks whether it should also consider extending to Big LEO MSS licensees the opportunity to incorporate terrestrial operations into their respective MSS networks.[46/] The problem with MSS services is not the lack of a terrestrial component, but rather the lack of a viable business plan. Despite years of development and massive investment, MSS providers have been unable to make effective use of the extremely valuable spectrum that they received for free. Simply granting terrestrial authority to every category of MSS operator will not address the overwhelming problems facing the MSS industry today.

If anything, there is too much spectrum allocated for MSS today. If Big LEO systems are not viable, the Commission should reallocate their spectrum to other services rather than looking for ways to prop up the Big LEO industry. As the Commission is all too well aware, despite exponential growth in

---

43/ Comments of the Cellular Telecommunications & Internet Association, ET Docket No. 00-258 (filed Oct. 19, 2001).

44/ Notice at ¶¶ 32, 46-49.

45/ Authorizing terrestrial service in the L-band may interfere with GPS-based E911 location systems.

46/ Notice at ¶ 79.

the need for CMRS spectrum, new sources have become increasingly difficult to identify. In light of recent evidence that there is little consumer demand for the services provided by licensees in the Big LEO band,[47/] this spectrum could be used to help alleviate the shortage of spectrum for other services.

47/ See CMRS Sixth Report at 35-38 (noting financial difficulties experienced by MSS system operators during past two years). See also David Barbozza, "Iridium, Bankrupt, Is Planning a Fiery Ending for its 88 Satellites," N.Y. Times, Apr. 11, 2000, at C1 (discussing Iridium bankruptcy after investing $5 million in system); Carmen Nobel, "New Satellite Service Rises from Ashes," eWEEK, April 2, 2001 (noting that although Iridium's new owners reintroduced service in March 2001, analysts question whether it can survive, given the "few necessary applications for satellite phone service"); "Globalstar Reveals Mounting Woes That May Spur Involuntary Bankruptcy Within Months," Satellite News, April 9, 2001 (stating that Globalstar has been threatened with a possible involuntary bankruptcy and is suffering from "weak subscriber gains, an inability to repay debt, and a growing number of legal disputes with shareholders and others").

CONCLUSION

For the reasons set forth above, the Commission should either limit any terrestrial service in the MSS bands to a truly ancillary component of the currently licensed satellite systems, or grant flexibility through a separate authorization awarded by a process of competitive bidding, open to all interested parties.

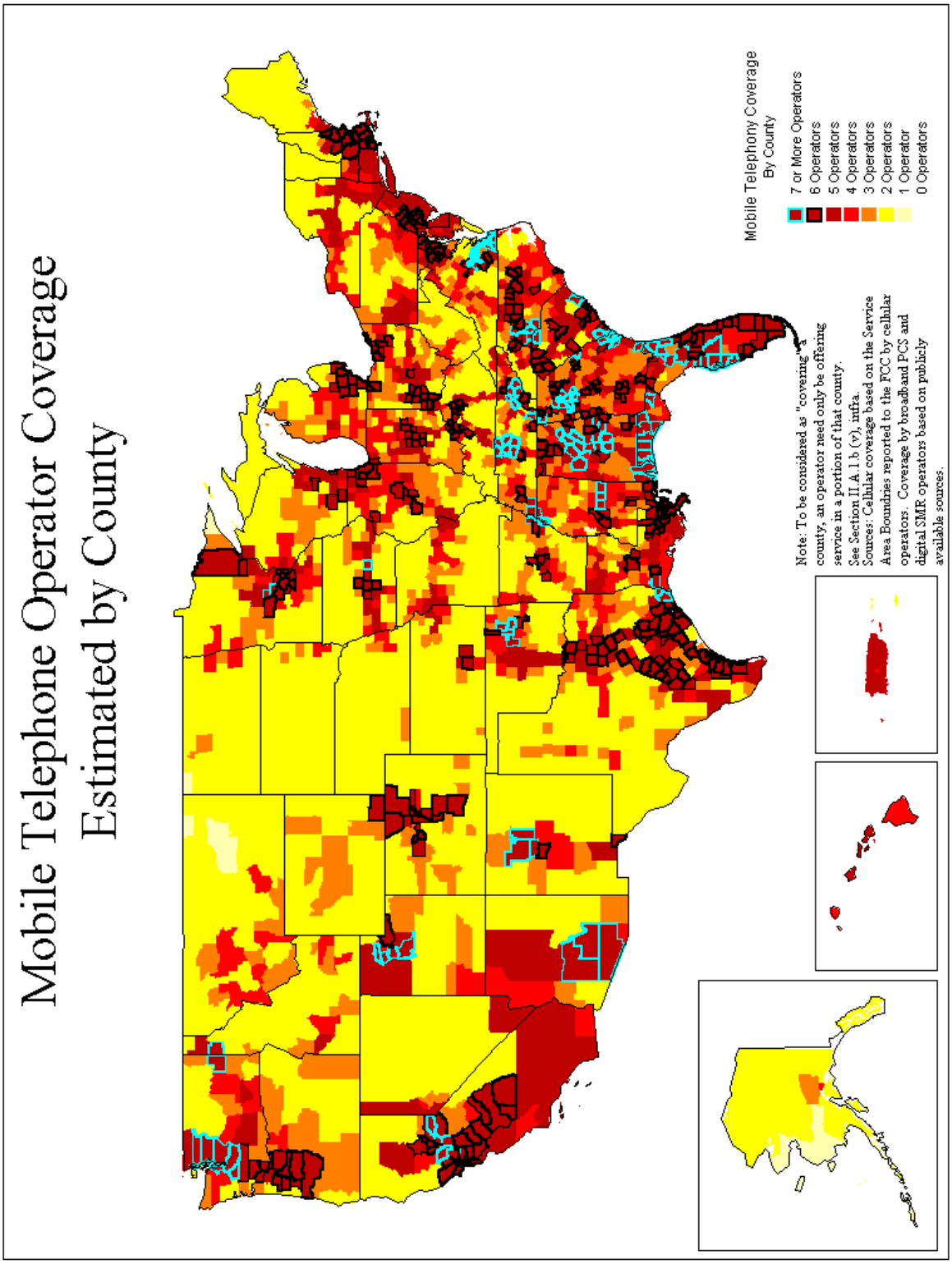
Respectfully submitted,

CELLULAR TELECOMMUNICATIONS
& INTERNET ASSOCIATION

Michael F. Altschul /s/
Michael F. Altschul
Senior Vice President, General Counsel
1250 Connecticut Avenue, N.W.
Suite 800
Washington, D.C. 20036
(202) 785-0081

October 22, 2001

Attachment



ATTACHMENT A: SIXTH ANNUAL REPORT AND ANALYSIS OF COMPETITIVE MARKET CONDITIONS WITH RESPECT TO COMMERCIAL MOBILE SERVICES

I hereby certify that I have this 22rd day of October, 2001, served a copy of the foregoing Cellular Telecommunications & Internet Association's comments by first class United States mail to the persons listed below.

Chairman Michael K. Powell (418-1000)
Office of the Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Commissioner Kathleen Abernathy
(418-2400)
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Commissioner Kevin Martin (418-2100)
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Commissioner Michael Copps
(418-2000)
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Don Abelson (418-0437)
IB
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Kathleen O'Brien Ham (418-0636)
WTB
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Tom Tycz (418-0735)
IB
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Jim Schlichting (418-0600)
WTB
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Richard Engelman (418-2157)
IB
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Kris Monteith (418-1098)
WTB
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Breck Blalock (418-8191)
IB
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Charles Rush
WTB
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Linda Armstrong (418-7490)
IB
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

David Furth (418-0632)
WTB
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Chris Murphy (418-2373)
IB
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

John Spencer (418-1896)
WTB
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Tom Sugrue (418-0600)
WTB
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Bruce Franca (418-2470)
OET
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Julius Knapp (418-2468)
OET
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Lauren Van Wazer (418-0300)
OET
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Peter Tenhula (418-1000)
Office of the Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Geri Matise (418-2322)
OET
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Robert Pepper (418-2030)
OPP
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Jordan Goldstein (418-2000)
Office of Commissioner Copps
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

David Sappington (418-2040)
OPP
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Paul Margie (418-2000)
Office of Commissioner Copps
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Susanna Zwerling (418-2000)
Office of Commissioner Copps
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Bryan Tramont (418-2400)
Office of Commissioner Abernathy
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Monica Desai (418-2100)
Office of Commissioner Martin
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Sam Feder (418-2100)
Office of Commissioner Martin
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dustun Ashton /s/
Dustun L. Ashton